



Paper No.31

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**OFFICE OF PETITIONS**

In re Application of  
MORINI et al.  
Application No. 08/603,497  
Filed: February 20, 1996  
Attorney Docket No. US-12001+1+2+3

DECISION GRANTING PETITION

This is a decision on the petition under 37 CFR 1.137(b) filed March 20, 2003.

The petition under 37 CFR 1.137(b) is granted.

As correctly noted in the petition this application became abandoned at midnight on April 28, 2002, for failure to appropriately reply within the meaning of 37 CFR 1.196(b) to the new ground of rejection set forth in the decision of the Board of Patent Interferences of February 28, 2002, as there were no allowed claims. As such, the subsequent proceedings before the Court of Appeals for the Federal Circuit (Fed. Cir.) did not operate to remove this application from the jurisdiction of the USPTO to revive this application. See In re Bryan, 2 USPQ2d 1215, 1216 (Comm'r Pat. 1986). In any event, petitioner's favorably considered motion before the Fed. Cir. to return jurisdiction to the USPTO has the same force and effect as if jurisdiction had never left the USPTO. Cf. MPEP 1216.01, Section D.

The petition includes an amendment and showing of facts so as to have the matter reconsidered by the examiner within the meaning of 37 CFR 1.196(b)(1). Accordingly, on petition, applicant's unintentional delay in submitting the proper reply to decision of February 29, 2002, is excused.

This application is being returned to Technology Center AU 1713 for the examiner's consideration of the amendment filed March 20, 2003, under the provisions of 37 CFR 1.196(b)(1).

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-1820.

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for Patent Examination Policy